



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Dept. of Medical Assistance Services; 12 VAC 30
VAC Chapter Number:	12 VAC 30-80
Regulation Title:	Methods and Standards for Establishing Payment Rates-Other Types of Care
Action Title:	Supplemental Payments for Type I Physicians
Date:	12/11/2002; GOV APPROVAL NEEDED BY 12/27/2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation creates a category of physicians who are members of practice plans affiliated with either a state academic health system or an academic health system under a state authority. The regulation authorizes Medicaid to make supplemental payments to these physicians for services provided to Medicaid recipients equal to the difference between the maximum permitted under federal law and regulations and what these providers are paid under the Medicaid physician fee schedule.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The Code of Virginia (1950) as amended, section 32.1-325, grants to the Board of Medical Assistance Services the authority to administer the Plan for Medical Assistance. The Code of Virginia (1950) as amended, section 32.1-324, authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the Board's requirements.-

Chapter 899, Item 325AA of the *2002 Acts of Assembly* authorized the Department of Medical Assistance Services to develop and pursue cost savings strategies that focus on maximizing upper payment limits. Medicaid payments to physicians are subject to the requirement in the *Social Security Act* Section 1902(a)(30), that payments for services be consistent with efficiency, economy, and quality of care. To the extent that Medicaid payments to physicians are less than that permitted under federal law and regulations, DMAS may make supplemental payments to physicians.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this regulation is to maximize federal revenue for the state. Assuming that either the state academic health system or academic health system under a state authority provides DMAS the money needed to make the supplemental payment through a transfer agreement, DMAS is able to make the supplemental payment at no net cost to either the state or the academic health system. DMAS intends to negotiate these transfer agreements prior to making the Medicaid supplemental payments. After the Medicaid payment is made, DMAS can draw down the federal financial participation (FFP) related to the Medicaid payment.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The section of the State Plan for Medical Assistance affected by this amendment is the Methods and Standards for Establishing Payment Rates-Other Types of Care (Attachment 4.19-B (12 VAC 30-80-30)).

The proposed regulation would create a category of physician (Type I) who is a member of a group affiliated with a state academic health system or an academic health system that operates under a state authority. This includes physicians affiliated with UVA Medical Center, VCU's Medical College of Virginia, and Eastern Virginia Medical School.

The proposed regulation would provide supplemental reimbursement for Type I physician services equal to the difference between the maximum amount permitted under federal law and regulation and the Medicaid fee schedule. If DMAS pays up to the provider charges, this meets the federal standard that payments for services be consistent with efficiency, economy, and quality of care.

Providers affected by this action are Type I physicians receiving the supplemental payments. Localities affected are those with Type I physicians. Other providers and localities are not affected, and recipients are not affected.

DMAS intends to negotiate transfer agreements with the public academic health centers with which these providers are associated through their group practices to provide the funding needed for this transaction.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Physicians affiliated with academic health centers fulfill an important and unique role within the Virginia health care system as safety net providers. Many safety-net providers incur costs for which they are not currently reimbursed above and beyond the costs incurred by private providers.

Because approximately 50% of Medicaid payments are federally funded, by maximizing payments to Type I physicians, the Commonwealth will maximize the federal funding available to Virginia through these increased Medicaid payments. No disadvantages to the public have been identified in connection with this regulation. The agency projects no negative issues involved in implementing this regulatory change.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

On an annual basis, DMAS expects to make supplemental payments to Type 1 physicians totaling \$27.3 million from which it will collect \$14.1 million in new federal revenues. The source of funds for the payment will be the academic health centers.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

This regulation adds a new subsection numbered 17 to 12 VAC30-80-30.

Subsection a of subsection number 17 authorizes DMAS to make supplemental payments to Type I physicians for services provided on or after July 2, 2002. This subsection also defines Type I physicians as members of a practice group organized or under the control of either a state academic health system or an academic health system that operates under a state authority.

Subsection b of subsection number 17 defines how to determine the supplemental payment. The supplemental payment is equal to the difference between the maximum amount allowed under federal law and regulation and the current Medicaid payment. The maximum amount that can be paid would be equal to physician charges.

However, the Department cannot change payment amounts unless it meets federal notice requirements. The amount of the supplemental payment and the effective dates are based on the following public notices. DMAS published a public notice on July 1 that it would make supplemental payments equal to the difference between what Medicare would pay and what Medicaid pays. DMAS published a second notice on August 12 that it would make supplemental payments equal to the difference between the maximum amount allowed under federal law and regulation and the current Medicaid payment.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The General Assembly has directed the agency to maximize revenue using upper payment limits. If this state regulation is not adopted the Commonwealth will not be able to maximize the federal funding available to Virginia. The only alternative is to make no change.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No comments were received during the NOIRA public comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The agency has reviewed the regulation and determined that it is clearly written and easily understandable. The regulation is similar in structure to 12 VAC 30-90-19.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

DMAS will include the monitoring, in collaboration with the affected industry, of this regulatory action as part of its ongoing management of State Plan policies and its Executive Order 21(02) activities.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of

responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation has no impact on recipients or their families. It will not strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; encourage or discourage economic self-sufficiency, self-pride; the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; strengthen or erode the marital commitment; nor increase or decrease disposable family income.